

**REPORT - PLANNING COMMISSION MEETING  
February 24, 2005**

**Project Name and Number:** Density Bonus Zoning Text Amendment and General Plan Amendment (PLN2005-00151)

**Applicant:** City of Fremont

**Proposal:** To consider a Zoning Text Amendment and General Plan Amendment to the City's Density Bonus regulations to comply with recent changes to State law.

**Recommended Action:** Recommend to City Council

**Location:** Citywide, Any land use designation where residential development of over five units is allowed. This would typically occur within Residential land use designations but could also occur in other designations, typically as a mixed use project.

**Agent of Applicant:** City of Fremont, Development and Environmental Services Department

**Consultant(s):** Barbara Kautz, Esq., Law Offices of Goldfarb Lipman  
Polly Marshall, Esq., Law Offices of Goldfarb Lipman

**Environmental Review:** A Negative Declaration has been prepared and circulated for this project.

**Existing General Plan:** Any land use designation where residential development of over five units is allowed. This would typically occur within Residential land use designations but could also occur in other designations, typically as a mixed use project.

**Existing Zoning:** All land within the City zoned for residential and/or mixed use development of five or more units.

**Existing Land Use:** Varied, typically residential, commercial or vacant.

**Public Hearing Notice:** A display advertisement for the Public Hearing Notice was delivered to The Argus on February 7, 2005 to be published by February 10, 2005. In addition, a Notice of Preparation of a Draft Negative Declaration was delivered to The Argus on January 10, 2005 to be published on January 13, 2005.

In addition, 250 public hearing notices were mailed as a courtesy to interested parties.

**Executive Summary:** As of January 1, 2005, recent changes to the State's Density Bonus Law (Senate Bill No. 1818) have gone into effect. As a general law city, Fremont must bring its zoning regulations into compliance with State law. The proposed zoning text and General Plan amendments intend to bring the City's density bonus regulations into conformance with new State Law (California Government Code Section 65915). The proposed changes do not authorize any new construction or development projects but rather amends the requirements and actual density bonus given to developers who seek and agree to construct affordable units in exchange for increased density.

**Background and Previous Actions:** In January 2003, Assembly Bill 1866, amending State law regarding State Density Bonus provisions, became effective. On May 13, 2003, the City Council adopted a new Housing Element. Housing Element Implementation Program 12 called for the adoption of a new Density Bonus Ordinance consistent with the provisions of State law. On July 24, 2003 the Planning Commission recommended the City Council approve the new Density Bonus Ordinance implementing State law. On September 9, 2003 the City Council approved PLN2003-00283, the Density Bonus Ordinance and additional affordable housing incentives.

**Project Description:** Senate Bill 1818 went into effect on January 1, 2005. The legislation requires cities to make a variety of changes in their local ordinances to conform to the new density bonus law. The following summarizes these changes with references to the former regulations provided where appropriate:

- **Reduced Target Units and Increased Bonus**

The new law lowers the number of target units required to qualify for a density bonus and increases the amount of bonus given. Under the new law, housing projects that provide 5% of the units for very low income households or 10% for lower income households are entitled to a 20% density bonus. Condo or planned development projects that provide 10% of the units for moderate income households are entitled to 5% density bonus. However, the bonus may be increased incrementally if the project provides additional affordable units up to a maximum 35% density bonus. Senior citizen housing projects with 35 units or more and which provide 100% affordable units are entitled a 20% density bonus. The former density bonus regulations allowed a maximum 25% density bonus for projects with 10-20% affordable units.

The following table summarizes this information:

<i>Target Group</i>	<b>Former Density Bonus Regulations</b>		<b>Current State Law Density Bonus Regulations</b>	
	<i>Target Units</i>	<i>Bonus Granted</i>	<i>Target Units</i>	<i>Bonus Granted</i>
Very Low Income	10%	25%	5%	20-35%*
Lower Income	20%	25%	10%	20-35%**
Moderate Income (Condo or Planned District only)	20%	10%	10%	5-35%***
Senior Citizen Housing Development	50%	25%	100%	20%

\* For each 1% increase over 5% of the Target Units the Density Bonus shall be increased by 2.5% up to a max of 35%

\*\* For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1.5% up to a max of 35%

\*\*\* For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1% up to a max of 35%

- **Required Number of Concessions and Incentives**

Under the new law, a developer is entitled to receive a certain number of concessions or incentives based upon the percentage of affordable units included in the project. One (1) incentive/concession must be granted to projects that provide at least 10% of the total units for lower income households, at least 5% for very low income households or at least 10% for moderate income families in a condo or planned development project. Two (2) incentives/concessions shall be granted to projects that provide at least 20% of the total units for lower income households, at least 10% for very low income households or at least 20% for moderate income families in a condo or planned development project. Three (3) incentives/concessions shall be granted to projects that provide at least 30% of the total units for lower income households, at least 15% for very low income households or at least 30% for moderate income families in a condo or planned development project. The following table summarizes this information:

<b>Target Group</b>	<b>Target Units</b>		
Very Low Income	5%	10%	15%
Lower Income	10%	20%	30%
Moderate Income (Condo or PD only)	10%	20%	30%
<b>Incentive(s)/Concession(s) Granted</b>	<b>1</b>	<b>2</b>	<b>3</b>

The concession/incentives granted may include modification to a variety of site or development standards. These may include a reduction of site development standards, zoning code requirements or architectural design requirements; approval of mixed-use zoning if non-residential uses will reduce the cost of the housing development; off-site construction of the target units; deferred development impact fees; or, other regulatory

incentives or concessions proposed by the developer or city which results in identifiable, financially sufficient, actual cost reductions.

The overall purpose of granting the incentives/concessions is to reduce the overall cost of the housing development which would, in theory, encourage the developer to build affordable units. The change in State law entitling the developer to more incentives/concessions is to offer a greater advantage to the developer and encourage more affordable units. The former density bonus regulations allowed one incentive/concession for projects no matter how many affordable units were provided.

- **Land Donation**

A new provision in the Density Bonus law is the ability of a developer to seek a density bonus for projects that donate land for residential use. Under this provision, a developer of any market rate housing project who donates land to a local government that accommodates housing for very low income households equal to at least 10% of the units in the market rate development is entitled to a 15% density bonus. For each 1% increase above the 10% minimum, the density bonus shall increase by one percent up to maximum of 35%. There are certain requirements that the donated land must meet for the developer to be eligible for the bonus. These requirements include the location, size, land use and the ability of the land to be served by public infrastructure. The land will also be subject to a deed restriction to ensure continued affordability.

- **Child Care Facilities**

Under the new law, housing developments that provide a child care facility are entitled to an additional density bonus or to an additional incentive or concession that contributes significantly to the economic feasibility to the construction of the child care facility. However, the City is not be required to provide the density bonus or additional incentive/concession if the City finds that the community already has adequate child care facilities.

- **Maximum Parking Standards**

The new law establishes new maximum parking standards for housing developments that qualify for a density bonus, imposed at the request of the developer. The parking standards are inclusive of guest parking and parking for disabled persons. The standards are based on the number of bedrooms provide per unit as follows:

- Zero to one bedroom – one parking space;
- Two to three bedrooms – two parking spaces;
- Four or more bedrooms – two and one-half parking spaces.

The modified standards for density bonus projects are similar to the existing parking requirements per Article 20 of the Zoning Ordinance. Staff feels that the slight difference in parking standards for density bonus projects will not have a significant impact.

Existing Multi-Family Parking Standards for Residential Development

Zero to one bedroom – one and one-half parking space;

Two bedrooms or larger – two parking spaces.

Existing Single-Family Parking Standards for Residential Development

Four or fewer bedrooms – two parking spaces;

Five or more bedrooms– three parking spaces.

## **PROJECT ANALYSIS:**

**General Plan Conformance:** A General Plan Amendment is also proposed to update the Land Use Chapter of the General Plan in conformance with the new law. Land Use Policy 1.6 addresses the Density Bonus provisions in the General Plan. The Policy outlines the specific percentages of target units a developer must provide to qualify for a density bonus. Since those percentages have now changed per the new State law, the General Plan must be also be amended. The proposed General Plan language is attached to this report as Exhibit B.

The General Plan Housing Element update was responsible for implementing the original Density Bonus Ordinance. The recent changes to the Density Bonus regulations are consistent with the Housing Element of the General Plan. No amendments are currently needed to the Housing Element. Although the Density Bonus Ordinance continues to implement the following Housing Element Goals, Policies and Programs:

- Goal H 3:           Housing Affordable and Appropriate for a Variety of Fremont Households at all Economic Levels throughout the City Consistent with the Hill Area Initiative of 2002.
- Policy 3A:           Adopt appropriate land use regulations and other development tools to encourage development of affordable housing, consistent with the Hill Area Initiative of 2002.
- Program 12:       *Density Bonus Ordinance.*  
Revise the City's Density Bonus Ordinance to include density bonus procedures and provisions that reflect current State Density Bonus law requirements (SB 1818). The new ordinance will amend the provisions and procedures of the City's Density Bonus law consistent with recent changes to State law.
- Program 13 A:   *Incentives "Package" for Affordable Housing Developments.*  
... The City will develop and market an "Incentives Package" for multi-family developers. The Incentives Package will encourage and facilitate the construction of affordable housing projects and projects that are developed above the required midpoint density of the respective land use designation and, in particular, for developments using the density bonus. ..."

**Zoning Regulations:** The proposed amendments to the Zoning Ordinance primarily affect Article 21.8, Density Bonus and Affordable Housing Incentives. This Article of the Ordinance has been rewritten to include the new changes as previously described.

However, two other Articles of the Zoning Ordinance are also affected by the recent changes in Density Bonus Regulations. These Sections include Article 7.5, R-3 Multifamily Residence District; and, Article 21.7, Inclusionary Housing. Both Articles include sections related to affordable housing, and specifically related to development incentives for providing affordable housing. Section 8-2755, Affordable Housing Incentives, of Article 7.5, R-3 Multifamily Residence District, has been amended to reference the new incentives section within the Density Bonus Ordinance.

Section 8-22173, Incentives, of Article 21.7, Inclusionary Housing, has also been amended to clarify which incentives are available to developers who comply with the Inclusionary Housing requirements but do not request a density bonus. These incentives are different than those offered to developers requesting a density bonus. The proposed language is attached to this report as Exhibit A.

**Inclusionary Zoning:** Individual residential projects with seven units or more will continue to be subject to the City's Inclusionary requirements. Inclusionary units, as in the past, will continue to be counted towards the target units needed to qualify for a density bonus. In essence, any project that is subject to the Inclusionary requirements for very low and low income households will automatically qualify for at least a 20% density bonus. It is important to note that the density bonus will only be awarded only if the applicant "seeks and agrees" to the density bonus. The language in the Inclusionary Ordinance has been modified to be consistent with the Density Bonus Ordinance in order to allow the Inclusionary units to count as density bonus units. In particular, the definition of "Affordable Ownership Cost" in the Inclusionary Ordinance will be amended to be consistent with the income levels required to qualify for affordable ownership units.

**ENVIRONMENTAL ANALYSIS:** An Initial Study has been prepared for this project. The environmental analysis did not identify any potential impacts as a result of the proposed project and accordingly a Negative Declaration has been prepared for consideration by the Planning Commission. A more detailed description is provided within the Initial Study for the project, which is included as an enclosure.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the

Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

Please note that individual projects that request a density bonus will still be subject to environmental review. Depending on the size, scope and complexity of these projects they may be exempt, require a negative declaration, mitigated negative declaration or environmental impact report.

#### **Response from Agencies and Organizations:**

This project was submitted to the Alameda County Congestion Management Agency (ACCMA) for review to determine if implementation of the proposal would create an impact on the regional transportation network. The Agency did not respond with any comments.

At the time of writing this report no comments have been received from outside agencies.

**ENCLOSURES:** Exhibit "A" Draft General Plan Language  
Exhibit "B" Draft Ordinance Language  
Exhibit "C" Existing Ordinance Language (informational)  
Initial Study, Draft Negative Declaration

**EXHIBITS:** Exhibit "A" Draft General Plan Language  
Exhibit "B" Draft Ordinance Language  
Initial Study, Draft Negative Declaration

#### **Recommended Actions:**

1. Hold public hearing.
2. Recommend that the City Council find the initial study conducted for the project has evaluated the potential impacts that could cause an adverse effect, either individually or cumulatively, on wildlife resources and find that there is no evidence the project would have any potential for adverse effect on wildlife resources. As a result, recommend the filing of a Certificate of Fee Exemption for the project.
3. Recommend to the City Council the adoption of Draft Negative Declaration finding that there is no substantial evidence that the project will have a significant effect on the environment and further find that this action reflects the independent judgment of the City of Fremont.
4. Find that the project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Housing Chapters as enumerated within the staff report.
5. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment (PLN2005-00151) so that portions of the Fremont Municipal Code dealing with Density Bonus regulations are consistent with recent changes to State law.
6. Recommend to Council approval of PLN2005-00151 to amend the General Plan language for the project in conformance with Exhibit "A" (General Plan Amendment Exhibit).
7. Recommend PLN2005-00151 to the City Council in conformance with Exhibit "B" (Zoning Text Amendment).